

**Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

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**In the Matter of**

**Distribution of the**

**2004-2009**

**Cable Royalty Funds**

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**Docket No. 2012-6 CRB CD 2004-2009  
(Phase II)**

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**In the Matter of**

**Distribution of the**

**1999-2009**

**Satellite Royalty Funds**

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**Docket No. 2012-7 CRB SD 2004-2009  
(Phase II)**

**Direct Testimony of**

**Jonda K. Martin**

**August 22, 2016**

**DIRECT TESTIMONY OF JONDA K. MARTIN**

**I. BIOGRAPHICAL INFORMATION**

My name is Jonda K. Martin. I am the President and Owner of Cable Data Corporation (“CDC”), which is located in Mount Airy, Maryland. In my more than 25 years at CDC, I have been actively involved in all aspects of the company, including research, data entry, report generation, and administration. I received a Bachelor of Science/Business Administration degree from American University in Washington, D.C., with concentrations in international business and management of information systems. I also received an MBA from University of Maryland. I have previously testified before the Copyright Arbitration Royalty Panel (“CARP”) regarding CDC’s operations in connection with the CARP’s distribution of 1998 and 1999 cable compulsory license royalties, and before the Copyright Royalty Judges (“Judges”) in connection with Phase I and Phase II proceedings regarding the distribution of the 2000, 2001, 2002, and 2003 cable royalty funds, and also the Phase I proceeding regarding the distribution of the 2004 and 2005 cable royalty funds. I also testified in the allocation phase of this proceeding prior to the Judges’ decision to reopen the record.

**II. PURPOSE OF TESTIMONY**

The purpose of my testimony is to provide the Judges with an overview of CDC’s operations and describe its data collection process and methodologies in relevant detail. I will describe the carriage data that CDC supplied to the Motion Picture Association of America, Inc. (“MPAA”) in connection with this proceeding, which I understand was

utilized by Dr. Jeffrey S. Gray in his analysis. I will also describe the local county analysis that CDC performed for MPAA in connection with this proceeding.

### **III. CABLE DATA CORPORATION**

CDC was established in 1979 to collect and analyze information on Statements of Account (“SOAs”) that cable systems file with the Licensing Division of the Copyright Office (“Licensing Division”). CDC makes the collected information available to users by purchase, either on an as needed basis or by subscription. CDC is the only company providing such a service. Numerous parties involved in the cable and satellite industries rely on data collected by CDC. This is particularly true for parties involved in copyright compulsory license proceedings. As a result, CDC data have been presented over the years to the Copyright Royalty Tribunal, the CARP, and the Judges in virtually all of the cable and satellite copyright royalty distribution proceedings and rate adjustment proceedings. In this section of my testimony, I will provide an overview of CDC’s operations and its data collection methodologies.

Data collection is an integral part of CDC’s operations. CDC has two full-time employees who spend the vast majority of each work day on-location in the Licensing Division of the Copyright Office. Those employees record data and other information from each publicly-available, filed SOA on laptop computers.<sup>1</sup> The employees return to CDC’s office periodically to transfer the data collected at the Copyright Office on laptops

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<sup>1</sup> Once SOAs are filed at the Copyright Office they are subject to review by the Licensing Division before they are made available for public inspection. The Licensing Division’s initial review typically causes a several month delay between the date that the SOAs are filed with the Office and when the filings are available for CDC’s on-site employees to access the information.

to CDC's HP3000 minicomputer. Once the data are transferred to CDC's minicomputer, CDC produces standard reports and customized reports which summarize the SOA data. To keep CDC data as consistent as possible with the SOAs on file with the Licensing Division, CDC performs regular system updates to account for modifications made to a system's filing, for reasons such as for additional royalty payments and refunds issued by the Licensing Division.

After the SOA data is entered in CDC's computer system, CDC produces both standardized and customized reports of aggregated cable and satellite system data for its clients. Both CDC's standardized and customized reports are derived from the same database and rely on the same CDC data protocols.

#### **IV. CDC CARRIAGE DATA PROVIDED TO MPAA**

At the request of counsel, CDC provided MPAA with customized data reports for each of the 2004-2009 cable and 2000-2009 satellite royalty years. For each royalty year, these data reports listed all commercial broadcast stations carried as full-time distant signals by cable systems, the number of distant subscribers to which each station was available, and CDC's calculation of the distant fees generated by that station. I understand that Dr. Gray utilized these data to select the sample stations for each royalty year at issue in this proceeding. CDC also provided customized data reports to MPAA for the recently concluded Phase II proceeding regarding the distribution of 2000, 2001, 2002 and 2003 cable royalty funds. I also understand that Dr. Gray utilized these CDC data in his economic analysis.

**V. CDC's LOCAL COUNTY ANALYSIS**

After Dr. Gray selected sample stations for each of the 2004-2009 cable and 2000-2009 satellite royalty years, MPAA's counsel sent the lists of sample stations for 2008 and 2009 cable and satellite to CDC to conduct a "county analysis" of each station. During the county analysis process, CDC analyzed each of these stations in order to determine which counties fall within the station's local service area.

CDC based identification of the counties local to each of the 2008 and 2009 cable and satellite sample stations on the FCC signal carriage rules.<sup>2</sup> A county was deemed local to the station under analysis if it met at least one of the following criteria: (1) it fell within the station's Designated Market Area ("DMA"); (2) the station was deemed "significantly viewed" per the FCC from the county; or (3) other factors that would qualify a county as local to the station in question. Appendix A to my testimony provides an illustration of how the local county analysis was performed for the royalty years at issue in this proceeding. Once CDC completed the local county analysis, I sent the results to MPAA's counsel. I understand that the results of CDC's local county analysis were provided to Nielsen.

Thank you for the opportunity to present this information in this proceeding. I hope that it will assist you in your deliberations.

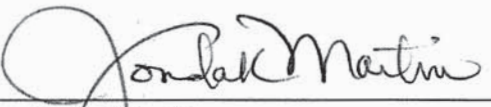
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<sup>2</sup> The signal carriage rules, now rescinded, were found at Sections 76.57 through 76.63 of the regulations of the FCC. 47 C.F.R. §§ 76.57-76.63 (1976).

**DECLARATION OF JONDA K. MARTIN**

I declare under penalty of perjury that the foregoing testimony is true and correct,  
and of my personal knowledge.

Executed on August 4, 2016

  
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Jonda K. Martin

**MARTIN**  
**APPENDIX A**

## **I. Local County Analysis Illustration For WKBD**

Described below are the steps CDC employed for the county analysis. The steps consist principally of Designated Market Area (“DMA”) analysis, significantly viewed (“SV”) analysis, 35-mile zone analysis, and the Grade B Contour analysis. I selected for the purpose of this testimony, WKBD. The analysis applied to WKBD is repeated for all of the stations in each sample – for which CDC conducted a county analysis.

### **A. DMA Analysis**

Nielsen groups counties by DMAs.<sup>1</sup> Each DMA consists of a group of counties forming an exclusive geographic area in which Nielsen has determined that the home market television stations hold a dominance of viewing. Although a few counties are split between DMAs, as a rule each county is assigned to one and only one DMA.

Attachment 1 is a page with the Detroit market (among others) from Nielsen’s September 2009 “U.S. TV Household Estimates” (“the DMA book”), which shows all DMAs and the counties associated with each. This page provides a good example of how DMAs are used to identify local cable system carriage for station WKBD, channel 50, licensed to Detroit. Again, the objective in determining the counties where a station is local is to enable Nielsen to exclude cable viewing from those counties, with the result that only distant viewing for WKBD will be captured.

The Detroit DMA market consists of nine Michigan counties:

Lapeer	Sanilac
Livingston	St. Clair
Macomb	Washtenaw
Monroe	Wayne
Oakland	

Because WKBD is licensed to Detroit, a cable system serving communities in any of these nine counties must carry WKBD to its subscribers as a local signal. CDC concluded that these nine counties were within WKBD’s local service area.

### **B. Significantly Viewed Analysis**

Besides the DMA criterion, stations are considered local in counties and/or communities in which the Federal Communications Commission (“FCC”) has deemed the station is “significantly viewed (SV) meaning the station reaches certain FCC-defined

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<sup>1</sup> The definition of “local service area” in Section 111(f) and 47 C.F.R. § 76.55(e)(2) defines a station’s market as its Nielsen DMA.



viewing thresholds within the county or community. Because a cable system serving County X must carry stations that are significantly viewed in County X (or Community X), such carriage is considered local.

Attachment 2 lists selected counties in Michigan and Ohio and the TV stations significantly viewed in each as reported on the FCC's website:  
<https://transition.fcc.gov/mb/significantviewedstations041916.pdf>.

In the case of WKBD, four counties outside the DMA are considered SV:

Genesee, MI              Lucas, OH

Lenawee, MI            Wood, OH

If a cable system serves communities located in these SV counties, that system must carry WKBD as a local signal and consequently, those SV counties were considered local to WKBD.

## **II. Other Criteria For Determining Whether a Station Is Local**

Besides the DMA and SV criteria, which identify the vast majority of local counties, CDC also examined other criteria to see if there are any additional counties that would be considered local. These criteria include the station's 35-Mile Specified Zone and Grade B Contour.

### **A. 35-Mile Specified Zone**

For all television markets, major and smaller, a cable system's carriage of a TV station to subscribers located inside the station's 35 mile specified zone means the station is local to those subscribers.

A copy of the 35-Mile Specified Zone for Detroit is shown as Attachment 3. FCC rules require a cable system serving communities located within that specified zone to carry WKBD as a local signal. Review of the zone indicated that the counties within the specified zone had already been classified as local due to the SV/DMA criteria.

### **B. The Grade B Contour**

Another criterion, in some situations, is the Grade B contour. The contour is an irregular and oddly-shaped circle surrounding the TV station's transmitter site. The Grade B is a measure of estimated signal strength based on the station's antenna size, power, and direction. The Grade B, in other words, is a measure of how clear a picture can be expected to be on a person's television set.

The Grade B contour can be used as a criterion in two circumstances relevant to the local county analysis CDC performed for 2008. The first circumstance has to do with stations licensed to Smaller Markets. If a cable system serves communities located in a Smaller Market, (*i.e.*, located within the 35-mile zone of such a market), the system can carry as local any station from another Smaller Market whose Grade B encompasses the communities served by the system. The second circumstance relates to systems serving communities located outside all television markets. In the case of a system serving such an area, the system may carry as local all stations whose Grade Bs encompass the communities served by the cable system. In both circumstances, if the station is local per the Grade B criterion, the Form 3 cable operator does not have to account for the station in its royalty calculation.

Attachment 4 is the Grade B contour of WKBD taken from the FCC's website. Cable systems serving communities that fall "outside all (television) markets" must carry as a local signal any station whose Grade B encompasses the communities of the system. To identify any such counties, CDC looked to see if there were any *additional* counties within WKBD's Grade B contour that were outside all markets and not already classified local by a previous standard. That review indicated that the counties within the Grade B contour had either already been classified as local due to the SV/DMA criteria or were not outside all markets.

Once CDC identified all the local counties for WKBD, I provided those counties to MPAA's counsel. WKBD's local counties were the nine counties in the Detroit DMA, plus the four SV counties, for a total of 13 counties in which WKBD was a local signal.

### III. County Analysis For "Partially-Local" Stations

In the course of CDC's analyses, we may find that an entire county is neither wholly distant nor wholly local. An example would be a county that is neither SV nor DMA for a station, but which falls partially within the 35-mile zone of the station's market. Another example might be a county located outside all television markets and partially covered by a station's Grade B. In these few cases, CDC relies on the location of a majority of the county's population to designate the county as local or distant. Because the entire county must be classified as either local or distant for purposes of the Nielsen Studies, it is reasonable to assume that viewing will track with population. For example, are more people (*i.e.*, viewers) located *inside* the 35-mile zone (or Grade B) or outside? If, in our example, most of the population is within the station's Grade B contour, we consider the county local. CDC relies on mapping, distance calculations and census data to measure coverage of a county in relation to the Grade B (or 35-mile zone).

**MARTIN**  
**APPENDIX A**  
**ATTACHMENT 1**

# U.S. TV HOUSEHOLD ESTIMATES

## BY COUNTY WITHIN DESIGNATED MARKET AREA (DMA)

DESIGNATED MARKET AREA**	STATE	COUNTY	COUNTY SIZE *	TOTAL HOUSEHOLDS	TV HOUSEHOLDS	% TV PENE- TRATION	% OF U.S. TV HOUSEHOLDS	DESIGNATED MARKET AREA**	STATE	COUNTY	COUNTY SIZE *	TOTAL HOUSEHOLDS	TV HOUSEHOLDS	% TV PENE- TRATION	% OF U.S. TV HOUSEHOLDS
679	DES MOINES-AMES (CONT'D)							802	EUREKA			63,700	60,900	96	.053
	IOWA								CALIFORNIA						
	POLK	M	B	174,400	173,600				DEL NORTE	D		9,900	9,500		
	POWESHIEK	D		7,500	7,430				HUMBOLDT	M	C	53,800	51,400		
	RINGGOLD	D		2,100	2,080			649	EVANSVILLE			294,000	292,220	99	.255
	STORY	M	C	32,900	32,650				ILLINOIS						
	TAYLOR	D		2,600	2,570				EDWARDS	D		2,800	2,790		
	UNION	D		5,300	5,260				WABASH	D		4,900	4,870		
	WARREN	M	B	16,800	16,770				WAYNE	D		7,000	6,900		
	WAYNE	D		2,600	2,550				WHITE	D		6,300	6,260		
	WEBSTER	D		15,200	15,130				INDIANA						
	WRIGHT	D		5,300	5,250				DUBOIS	D		16,000	15,930		
505	DETROIT			1,937,000	1,926,970	99	1.684		GIBSON	M	D	13,200	13,130		
	MICHIGAN								PERRY	D		7,500	7,470		
	LAPEER	M	A	33,200	33,050				PIKE	D		5,100	5,050		
	LIVINGSTON	M	A	68,100	67,790				POSEY	M	C	10,000	9,950		
	MACOMB	M	A	338,200	337,490				SPENCER	D		7,700	7,640		
	MONROE	M	A	58,800	58,630				VANDERBURGH	M	C	73,900	73,620		
	OAKLAND	M	A	484,600	482,790				WARRICK	M	C	22,300	22,190		
	SANILAC	D		16,800	16,590				KENTUCKY						
	ST CLAIR	M	A	66,600	66,330				DAVISS	C		38,400	38,250		
	WASHTENAW	M	A	140,700	139,160				HANCOCK	D		3,500	3,460		
	WAYNE	M	A	730,000	725,140				HENDERSON	M	C	18,900	18,820		
606	DOTHAN			101,700	100,950	99	.088		HOPKINS	D		19,300	19,140		
	ALABAMA								MCLEAN	D		4,000	3,960		
	COFFEE	M	D	19,800	19,640				MUHLNBERG	D		12,600	12,370		
	DALE	M	C	19,200	19,040				OHIO	D		9,500	9,420		
	GENEVA	M	D	10,800	10,700				UNION	D		5,600	5,580		
	HENRY	M	D	7,000	6,950				WEBSTER	M	D	5,500	5,420		
	HOUSTON	M	C	40,300	40,060			745	FAIRBANKS			38,800	37,110	96	.032
	GEORGIA								ALASKA						
	EARLY	D		4,600	4,560				FAIRBANKS-PLUS	C		38,800	37,110		
676	DULUTH-SUPERIOR			175,100	173,180	99	.151	724	FARGO-VALLEY CITY			243,100	241,120	99	.211
	MICHIGAN								MINNESOTA						
	GOGEBIC	D		6,700	6,560				BECKER	D		13,200	13,020		
	MINNESOTA								CLAY	M	C	21,000	20,940		
	CARLTON	M	D	13,400	13,330				CLEARWATER	D		3,400	3,300		
	COOK	D		2,600	2,490				KITSON	D		1,800	1,790		
	ITASCA	D		18,700	18,500				LAKE OF WOODS	D		1,800	1,760		
	KOOCHICHING	D		5,900	5,810				MAHONOMET	D		2,000	1,990		
	LAKE	D		4,600	4,570				MARSHALL	D		4,000	3,980		
	ST LOUIS	M	C	81,000	80,290				NORMAN	D		2,700	2,680		
	WISCONSIN								OTTER TAIL	D		23,200	22,980		
	ASHLAND	D		6,700	6,570				PENNINGTON	D		5,700	5,660		
	BAYFIELD	D		6,600	6,450				POLK	C		12,200	12,120		
	DOUGLAS	M	C	18,500	18,410				RED LAKE	D		1,700	1,680		
	IRON	D		3,100	3,090				ROSEAU	D		6,200	6,120		
	SAWYER	D		7,300	7,110				WILKIN	D		2,500	2,490		
765	EL PASO (LAS CRUCES)			311,000	308,080	99	.269		NORTH DAKOTA						
	NEW MEXICO								BARNES	M	D	4,500	4,480		
	DONA ANA	C		71,000	69,660				BENSON	D		2,300	2,280		
	TEXAS								CASS	M	C	62,400	61,860		
	CULBERSON	D		900	890				CAVALIER	D		1,600	1,590		
	EL PASO	M	B	238,000	236,470				DICKEY	D		2,100	2,090		
	HUDSPETH	D		1,100	1,060				EDDY	D		1,000	990		
565	ELMIRA (CORNING)			97,300	96,090	99	.084		FOSTER	D		1,500	1,490		
	NEW YORK								GRAND FORKS	C		26,000	25,850		
	CHEMUNG	M	C	34,700	34,520				GRIGGS	D		1,100	1,090		
	SCHUYLER	D		7,500	7,400				LA MOURE	D		1,700	1,690		
	STUYVEN	C		39,000	38,440				NELSON	D		1,400	1,390		
	PENNSYLVANIA								PEMBINA	D		3,100	3,030		
	TIOGA	D		16,100	15,730				RAMSEY	D		4,700	4,680		
516	ERIE			158,800	157,610	99	.138		RANSOM	D		2,300	2,280		
	PENNSYLVANIA								RICHLAND	D		6,400	6,360		
	CRAWFORD	M	C	34,200	33,690				SARGENT	D		1,700	1,680		
	ERIE	M	C	107,800	107,320				STEELE	D		700	690		
	WARREN	D		16,800	16,600				STUTSMAN	D		8,500	8,440		
801	EUGENE			248,800	242,790	98	.212		TOWNER	D		1,000	990		
	OREGON								TRAILL	D		3,200	3,180		
	BENTON	C		34,500	33,350				WALSH	D		4,500	4,480		
	COOS	C		27,300	26,610			513	FLINT-SAGINAW-BAY CITY			468,000	465,790	100	.407
	DOUGLAS	C		43,100	42,180				MICHIGAN						
	LANE	M	C	143,900	140,650				ARENAC	D		6,600	6,550		
									BAY	M	B	44,200	44,040		
									GENESEE	M	A	173,400	172,670		
									GLADWIN	D		11,000	10,910		
									GRATIOT	D		14,500	14,350		
									HURON	D		13,800	13,680		
									IOSCO	D		11,800	11,720		
									ISABELLA	D		24,600	24,350		
									MIDLAND	B		32,600	32,480		
									OGEMAW	D		9,000	8,970		
									SAGINAW	M	B	77,500	77,260		
									SHIAWASSEE	C		27,500	27,420		

M METRO COUNTY OF DMA MARKET  
 NM METRO COUNTY OF NON-DMA MARKET

\* SEE PAGE A FOR COUNTY SIZE DEFINITIONS  
 \*\* SEE PAGE A FOR DMA CODE AND NAME DEFINITION

**MARTIN**  
**APPENDIX A**  
**ATTACHMENT 2**

**Significantly-Viewed Counties---WKBD, Detroit**

**Michigan**

Genesee

WNEM-TV, 5, Bay City, MI  
WJRT-TV, 12, Flint, MI  
+WSMH, 66, Flint, MI  
#WJBK, 2, Detroit, MI  
#WDIV, 4, Detroit, MI (formerly WWJ)  
#WXYZ-TV, 7, Detroit, MI  
#WKBD-TV, 50, Detroit, MI  
WLNS-TV, 6, Lansing, MI (formerly WJIM)

Lenawee

WJBK, 2, Detroit, MI  
WDIV, 4, Detroit, MI (formerly WWJ)  
WXYZ-TV, 7, Detroit, MI  
CBET, 9, Canada (formerly CKLW)  
WKBD-TV, 50, Detroit, MI  
WTOL-TV, 11, Toledo, OH  
WTVG, 13, Toledo, OH (formerly WSPD)  
WNWO-TV, 24, Toledo, OH (formerly WDHO)  
+WUPW, 36, Toledo, OH

**Ohio**

Lucas

WTOL-TV, 11, Toledo, OH  
WTVG, 13, Toledo, OH (formerly WSPD)  
WNWO-TV, 24, Toledo, OH (formerly WDHO)  
+WUPW, 36, Toledo, OH  
#WJBK, 2, Detroit, MI  
#WXYZ-TV, 7, Detroit, MI  
+WKBD-TV, 50, Detroit, MI

Wood

WTOL-TV, 11, Toledo, OH  
WTVG, 13, Toledo, OH (formerly WSPD)  
WNWO-TV, 24, Toledo, OH (formerly WDHO)  
+WUPW, 36, Toledo, OH  
WKBD-TV, 50, Detroit, MI

**MARTIN**  
**APPENDIX A**  
**ATTACHMENT 3**



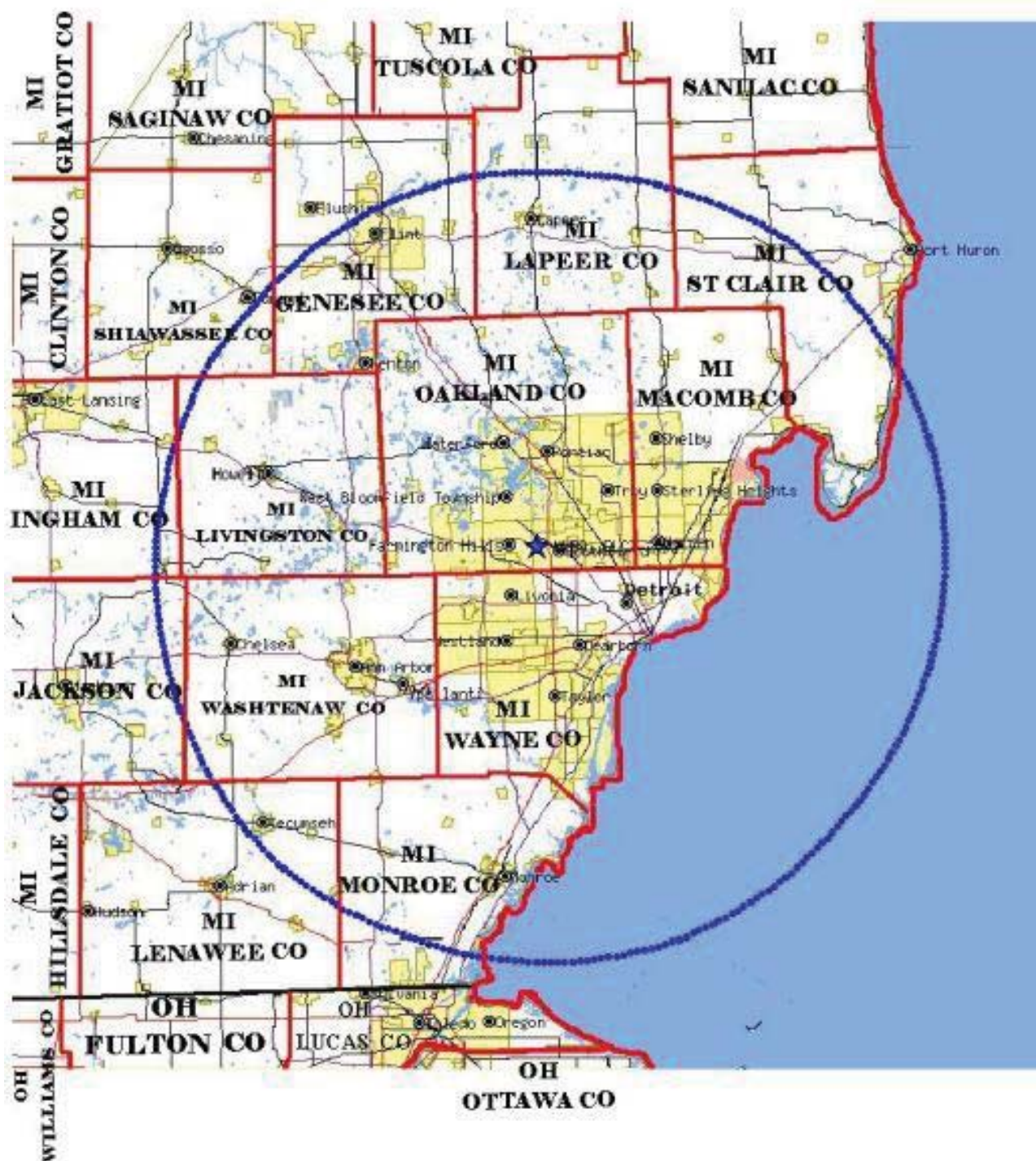
# MI DETROIT





**MARTIN**  
**APPENDIX A**  
**ATTACHMENT 4**

# WKBD\_50\_CW\_DETROIT\_MI ANALOG



CABLE DATA CORPORATION

## Certificate of Service

I hereby certify that on Thursday, April 05, 2018 I provided a true and correct copy of the Written Direct Testimony of Jonda K. Martin, filed August 22, 2016. to the following:

Independent Producers Group (IPG), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Devotional Claimants, represented by Benjamin S Sternberg served via Electronic Service at ben@lutzker.com

Signed: /s/ Lucy H Plovnick